Lau Kong Peng & Ors v Public Prosecutor

HIGH COURT (MIRI) — CRIMINAL REVISION NO 43–04 OF 1998
ELIZABETH CHAPMAN JC
30 JULY 1998

Criminal Procedure *— Revision — Remand proceedings — Failure of lower court to record reasons for remand — Whether accused or his counsel is entitled to see ID or be supplied copies of it — Whether order of remand was legal — Criminal Procedure Code (FMS Cap 6) ss 117 & 119*

The issue before this court was whether the failure of the lower court — in ordering the remand of the first applicant — to record the reasons for the remand coupled with the failure of the police to comply with s 117 of Criminal Procedure Code (FMS Cap 6) ('the CPC') would render the order of remand ('the order') illegal. Counsel argued that the ID supplied to the magistrate was a public document and therefore counsel should be entitled to copies of it under s 119 of the CPC.

Held, dismissing the application for revision:

(1) The magistrate granted the order after considering the grounds of the application as well as the objections from counsel. There was no doubt that the magistrate had extended the remand on valid grounds. In view of this, the failure on the part of the magistrate to record her reasons was merely an irregularity (see pp 502G and 503A–D); *Sundar Singh v Emperor* AIR 1930 Lah 945 followed.

(2) The accused or his counsel was not entitled to see the ID or to have copies of it merely because they were referred to by the court (see p 503E–G).

[Bahasa Malaysia summary

Isu di hadapan mahkamah ini adalah sama ada kegagalan mahkamah bawah — dalam memerintahkan tahanan pemohon pertama — untuk mencatatkan alasan bagi tahanan bersama dengan kegagalan polis untuk mematuhi s 117 Kanun Acara Jenayah (NMB Bab 6) ('KAJ') akan menyebabkan perintah tahanan ('perintah tersebut') menjadi tidak sah. Peguam berhujah bahawa ID yang disediakan kepada majistret merupakan dokumen awam dan maka peguam haruslah berhak mendapat salinan-salinan di bawah s 119 KAJ.

Diputuskan, menolak permohonan untuk semakan:

(1) Majistret membenarkan perintah tersebut setelah mempertimbangkan alasan-alasan permohonan serta bantahan peguam. Tiada keraguan bahawa majistret telah melanjutkan tahanan atas alasan yang sah. Memandangkan begitu, kegagalan majistret untuk mencatatkan alasan beliau cumalah luar aturan (lihat ms 502G dan 503A–D); *Sundar Singh v Emperor* AIR 1930 Lah 945 diikut.

(2) Tertuduh atau peguamnya tidak berhak melihat ID atau kepada salinanya hanya kerana mereka dirujuk oleh mahkamah (lihat ms 503E–G).]

Notes

For a case on remand proceedings, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 2143.

Case referred to

Sundar Singh v Emperor AIR 1930 Lah 945 (folld)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) ss 117, (i), (ii), 119
Criminal Procedure Code s 172(3) [India]

Victor Wong (*Victor Wong & Chiew*) for the first applicant.
Wong Sing Nang (*Wong Orlando, Chua & Co*) for the second applicant.
Bhupindar Singh (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Elizabeth Chapman JC: The issue before this court in this application for revision is that, the lower court in ordering the remand of the suspects, had failed to record the reasons for the remand coupled with the failure of the police to comply with s 117 of the Criminal Procedure Code (FMS Cap 6). From the record of proceedings, it is clear that the magistrate did not record the reasons for ordering the detention on the first applicant for remand in compliance with s 117(iii) of the Criminal Procedure Code. However, in the application for remand by the police, the order was given because there were adequate reasons provided. This is apparent from the ID dated 20 March 1998 details Nos 5 and 6. The case pertains to an offence of house-breaking involving an amount of RM220,000. In my view, the failure on the part of the magistrate to record her reasons is merely an irregularity. In *Sundar Singh v Emperor* AIR 1930 Lah 945, the court stated:

> It was urged that the order of remand was illegal as the magistrate has given no reasons for remanding the prisoner to police custody as he was required to do, by sub-s (3) of the aforesaid section. The order of the magistrate is, no doubt, not sufficiently clear in this respect. Although he was not expected to pass any elaborate order, he should certainly have briefly indicated his reasons for remanding the prisoner to police custody. However, it appears that there were some grounds for believing that the prisoner was concerned in a serious conspiracy and further information has been since obtained during the course of the investigation. In the circumstances, the defect in the magistrate's order cannot be treated as more than an irregularity.

A In the subsequent application for remand, it was shown to the court that a substantial amount of goods was recovered as a result of information given by the suspects. It is apparent from the record of proceedings that the magistrate had considered the grounds of the application as well as the objections from counsel and had made the order of remand to give the police more time to investigate the case. The magistrate had, in this B subsequent application, recorded her reasons.

Counsel further argued that the same grounds were put forward each time when application for remand was made. Suffice it to say that different grounds were given on each application and that certain grounds pertaining to the recording of statements from the suspects and witnesses may be the C same. However, it is to be remembered that not all the witnesses needed by the police could be traced in a short period of time and the release of the suspects may well jeopardize investigations. There is no doubt that the magistrate, after considering the application for extension of remand, had extended the remand on valid grounds. In each application for remand, D the ID was supplied to the magistrate in compliance with s 117(i) of Criminal Procedure Code. The magistrate therefore had proper jurisdiction to make the order for detention. The suspects did in this case give information to the police which resulted in the discovery of the goods and gold.

The main issue in this application is counsel's contention that the ID E be made available for counsel to see in so far as remand proceedings are concerned. It was argued that the ID is a public document and therefore counsel should be entitled to copies of it under s 119 of Criminal Procedure Code. However, nowhere is it stated in ss 117 and 119 that the accused or his counsel is entitled to see the ID or to have copies of it. A copy of the F entries in the diary relating to the case must be transmitted to the magistrate (see s 117(i)) and this should be sent together with the remand report. The remand report and the ID are two different things. The ID is transmitted to the magistrate in compliance with ss 117(i) and 119(i) of Criminal Procedure Code whereas the remand report is the remand application with documents enclosed. Neither the accused nor his agents shall be entitled G to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the court: Sohoni's *Code of Criminal Procedure 1973* at p 1807 on s 172(3) Indian Criminal Procedure Code which is s 119(ii) of our Criminal Procedure Code. In no case is an accused person entitled as of right to a copy of any statement recorded by H a police officer in the special diary and neither the accused or his agent is entitled to call for such diary merely because it is referred to the court. The said s 119(ii) confers an absolute right on the court to inspect all police diaries in connection with the investigation of an offence which is under inquiry or trial before it, but this use is permitted to the court and the court alone. In the case diary, there might be a note as regards the identity of the I informant who gave some information which resulted in investigation into a particular aspect. Public interest demands that such an entry is not made available to the accused for it might endanger the identity of the informants and this may in turn deter the informants from giving information to assist

in investigations: see Sohoni's *Code of Criminal Procedure 1973* at pp 1811–1813.

In this case, I hold that ss 117 and 119 of the Code have been complied with; the order of detention was proper and in accordance with the law. This application is therefore dismissed.

Application dismissed.

Reported by Loo Lai Mee